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Attorneys for James Larkin

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

IN THE MATTER OF THE SEIZURE  
OF:

No. CV 18-06742-RGK (PJW)

ANY AND ALL FUNDS HELD IN  
REPUBLIC BANK OF ARIZONA  
ACCOUNT(S) XXXX1889, XXXX2592,  
XXXX1938, XXXX2912, AND,  
XXXX2500.

**EX PARTE APPLICATION FOR  
ORDER SHORTENING TIME ON  
MOTION TO ACCESS AND USE  
PURPORTEDLY INADVERTENTLY  
PRODUCED MATERIALS;  
[PROPOSED] ORDER**

## Hearing Information

Date: October 22, 2018

Time: 9:00 a.m.

Judge: Hon. R. Gary Klausner

Place: Courtroom 850

255 E. Temple Street, 8<sup>th</sup> Fl.  
Los Angeles, CA 90012

1     **I. PRELIMINARY STATEMENT**

2         By this application, James Larkin asks the Court to consider on shortened time his  
 3 concurrently-filed *Motion to Access and Use Purportedly Inadvertently Produced*  
 4 *Materials* (the “Production Motion”), so that it may be considered contemporaneously with  
 5 Mr. Larkin’s *Motion to Vacate or Modify Seizure Warrants* (the “Seizure Motion”) (Dkt.  
 6). As set forth below and in the Production Motion, the Production Motion raises several  
 7 important issues that relate directly to issues at the heart of the Seizure Motion—in  
 8 particular, material misstatements and/or omissions made by the government in the process  
 9 of obtaining the civil seizures at issue in the Seizure Motion.

10         Accordingly, Mr. Larkin asks the Court to rule on the Production Motion on an  
 11 expedited basis, so that the two motions may be considered contemporaneously.

12     **II. THE COURT SHOULD CONSIDER THE PRODUCTION MOTION ON AN  
 13 EXPEDITED BASIS**

14         On July 2, 2018, in the matter of *United States v. Lacey*, No. CR-18-422-PHX-SPL  
 15 (D. Ariz.), the government produced materials it stated were “mistakenly withheld” from a  
 16 production of documents the government made roughly a month earlier. *See* Declaration  
 17 of Paul J. Cambria in Support of Motion to Access and Use Purportedly Inadvertently  
 18 Produced Materials (the “Cambria Decl.”), at Exs. 1 & 2. These documents included  
 19 numerous exculpatory documents that directly contradict or seriously undermine the central  
 20 averments in the affidavits submitted in support of the civil seizure warrants that are at issue  
 21 in the Seizure Motion, and showing that, when seeking the *ex parte* seizure warrants in this  
 22 Court, the government failed to disclose critical adverse evidence and controlling law.

23         On July 27, the defense confronted the government with some of the exculpatory  
 24 documents. In response, the government asserted that it had “inadvertently produced” some  
 25 documents it previously determined were “mistakenly withheld.” *See id.*, Ex. 7 (July 27,  
 26 2018 USAO email). On July 30, nearly a month after its supplemental production, the  
 27 government provided a list of 118 “documents”—comprising nearly 10,000 pages—it  
 28 claimed had been “inadvertently produced.” *See id.*

1        Thereafter, the defense made multiple inquiries to the government concerning its  
 2 purported “inadvertent production” and assertion of work-product privilege, including the  
 3 factual and legal basis for the same. Despite repeated requests and after six weeks’ time,  
 4 the government has provided no meaningful answers, including regarding the cause of the  
 5 allegedly inadvertent disclosure, what steps (if any) the government took to avoid such a  
 6 wholesale inadvertent production, and whether the government had disclosed the  
 7 documents at issue, or their substance, to third parties. Instead, even after receiving the  
 8 government long-promised letter Tuesday evening, the defense has only incomplete and  
 9 evasive answers to their repeated inquiries. *See, id.* at ¶ 15 & Exs. 8-15.

10      Pursuant to its Order entered September 17, 2018—after noting the government’s  
 11 troubling “inability to adhere to deadlines”—the Court granted the government yet a further  
 12 extension of time to file its opposition to the Seizure Motion. *See* Dkt. 55 (Minute Order).  
 13 In that same Order, the Court gave Mr. Larkin and parties joining the Seizure Motion until  
 14 September 25, 2018 to file any reply to the government’s opposition, and indicated that it  
 15 would then take the matter under submission, with no counsel appearing at the calendared  
 16 September 24, 2018 hearing. *Id.*

17      Much like its troubling inability to adhere to deadlines set by this Court, the  
 18 government made repeated promises to provide information responding to the direct and  
 19 specific inquiries made by defense counsel concerning the government’s purported  
 20 inadvertent disclosure and work-production assertions, but the government failed to timely  
 21 respond and, when it finally responded two days ago, failed to provide adequate  
 22 information. While Defendants made extensive efforts to resolve this issue prior to filing  
 23 the Production Motion, it appears that the government’s repeated assurances that  
 24 information will be provided, but failure to meaningfully respond to the defendants’  
 25 requests for information substantiating the alleged “inadvertent disclosure” and work-  
 26 product assertions, has been designed to prevent these documents from being used in  
 27 connection with the Seizure Motion, and to shield the documents from Court scrutiny when  
 28 ruling on the same.

1 **III. CONCLUSION**

2 For the foregoing reasons, and for those set forth in the Production Motion, Mr.  
3 Larkin respectfully requests that the Court grant this application and set an expedited  
4 briefing schedule on the Production Motion, so that the Court may consider it concurrently  
5 with the Seizure Motion.

6 On September 17, 2018, prior to filing this application, Mr. Larkin's counsel  
7 attempted to contact Assistant United States Attorney John A. Kucera (T: (213) 894-3391;  
8 E-mail: John.Kucera@usdoj.gov) to determine the government's position on the requested  
9 relief. As of the filing of this application, no response has been received from Mr. Kucera.  
10 Notwithstanding the same, Mr. Larkin believes the government will likely oppose this  
11 application.

12  
13 Dated: September 20, 2018

BIENERT, MILLER & KATZMAN, PLC

14 By: /s/ Thomas H. Bienert

15 Thomas H. Bienert

16 Kenneth M. Miller

17 Anthony R. Bisconti

Whitney Z. Bernstein

18 Attorneys for James Larkin

DAVIS WRIGHT & TREMAINE, LLP

19 By: /s/ James C. Grant

20 James C. Grant

21 Robert Corn-Revere

22 Attorneys for James Larkin

1 **PROOF OF SERVICE**  
2

3 STATE OF CALIFORNIA, COUNTY OF ORANGE  
4

5 I am employed in the County of Orange, State of California. I am over the age of  
6 18 and not a party to the within action. My business address is 903 Calle Amanecer, Suite  
7 350, San Clemente, California 92673. I declare that I am employed in the office of a  
member of the bar of this Court at whose direction the service was made.  
8

9 On September 20, 2018, I served the following document described as EX PARTE  
10 APPLICATION FOR ORDER SHORTENING TIME ON MOTION TO ACCESS AND  
11 USE PURPORTEDLY INADVERTENTLY PRODUCED MATERIALS on all interested  
12 parties in this action as stated on the attached service list:  
13

- 14 [ ] **BY MAIL** - I deposited such envelope in the mail at San Clemente, California.  
15 The envelope was mailed with postage thereon fully prepaid. I am "readily  
16 familiar" with the firm's practice of collection and processing correspondence for  
17 mailing. Under that practice it would be deposited with the U.S. Postal Service on  
18 that same day with postage thereon fully prepaid at San Clemente, California in the  
19 ordinary course of business. I am aware that on motion of the party served, service  
20 is presumed invalid if postal cancellation date or postage meter date is more than  
21 one (1) day after date of deposit for mailing in affidavit.  
22 [ ] **BY PERSONAL SERVICE** - I caused such envelope to be delivered by a process  
23 server employed by Name of process service company .  
24 [X] **BY ELECTRONIC TRANSMISSION** - I transmitted a PDF version of this  
25 document by electronic mail to the party(s) identified on the attached service list  
using the e-mail address(es) indicated.  
26 [ ] **BY OVERNIGHT DELIVERY** - I deposited such envelope for collection and  
27 delivery by Federal Express with delivery fees paid or provided for in accordance  
28 with ordinary business practices. I am "readily familiar" with the firm's practice of  
29 collection and processing packages for overnight delivery by Name of Company .  
30 They are deposited with a facility regularly maintained by Name of Company for  
31 receipt on the same day in the ordinary course of business.  
32

33 I declare under penalty of perjury under the laws of the United States of America  
34 that the foregoing is true and correct.  
35

36 Executed on September 20, 2018, at San Clemente, California.  
37

38 /s/ Carolyn K. Howland  
39 Carolyn K. Howland  
40

1 **SERVICE LIST**  
2

3 ***IN THE MATTER OF THE SEIZURE OF: ANY AND ALL FUNDS HELD IN REPUBLIC***  
4 ***BANK OF ARIZONA ACCOUNT(S) XXXX1889, XXXX2592, XXXX1938, XXXX2912,***  
5 ***AND XXXX2500***

6 Central District of California – Case No. CV 18-06742-RGK (PJW)

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